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BRINKS HOFER GILSON & LIONE			REICHLE, KARIN M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/825,609
Filing Date: April 03, 2001
Appellant(s): SHERROD ET AL.

Amanda M. Church
For Appellant

EXAMINER'S ANSWER

MAILED

SEP 06 2005

Group 3700

This is in response to the appeal brief filed 6-24-05.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the issues in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Prior Art of Record*

0 945 110	UNI-CHARM (EP)	9-1999
3,612,054	MATSUDA	10-1971
2,929,379	POULSEN	3-1960

(9) ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

The terminology “substantially affect the flow”, “substantial change to flow direction” and “partially inhibit the flow of fluid” is defined as set forth on page 10, line 16-page 11, line 6 of the specification. The terminology “fluid impermeable” is interpreted in light of the specification at page 11, lines 15-20. With respect to the terminology “continuous”, the American Heritage Dictionary defines such as “Extending or prolonged without interruption or cessation, unceasing”. Also note Applicant’s remarks bridging pages 7-8 of the 10-15-02 response. With regard to the terminology “pore”, in light of the paragraph bridging pages 6-7 of the specification, such is interpreted to include both interstices of fibrous materials as well as apertures of film materials. The terminology “absorbent garment” is defined as set forth on page 4, lines 16-25.

Issue 1:

Claims 1-3, 6, 9, 12-14 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm EP ‘110 in view of Matsuda ‘054.

With regard to claim 1, the broadest claim, see Figures, especially Figures 4, 6B, 7B, 9, col. 1, lines 8-48, col. 2, lines 13-43, col. 4, lines 13-15 and 43-44, col. 5, lines 6-11, col. 6, lines 3-8, 24-27 and 54 et seq, col. 7, lines 31-39, col. 8, lines 30-39, col. 9, lines 40-42, col. 10, lines

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1-8, col. 11, lines 28, et seq and col. 12, lines 13-22 of Unicharm '110, i.e. the body facing outer surface or cover layer is 21, the garment-facing outer surface or cover layer is 22, 31, 41, the absorbent layer is 23. Therefore, the Unicharm sanitary napkin includes all the claimed structure except for a continuous fluid impermeable delay layer (see claim language interpretation section supra) as claimed in the last three sections of claim 1. It is again noted that Unicharm teaches that it is desirable for the removable or replaceable insert or napkin to entirely absorb the received fluid allowing continuous usage of the undergarment underneath or absorb the primary portion of the fluid with any remaining fluid passing to the absorbent undergarment underneath through layer 22, 31 or 41 rather than leaking from the sides of the pad, and thereby, of the undergarment. Also note paragraph 67 thereof again. Also, see Matsuda at the Figures, col. 1, line 1, col. 1, lines 2-7, col. 1, line 26-col. 2, line 26, i.e. also teaches a sanitary napkin for absorbing fluid which not only includes a body facing outer surface or cover layer which is the top portion of 11 and a garment-facing outer surface or cover layer which is the bottom portion of 11 but also includes absorbent layer(s) which is at least one of the layers 8-8a in combination with underlying continuous fluid impermeable delay layer(s) as claimed(see claim language interpretation section supra and col. 2, lines 18-26 and col. 1, lines 30-41) which is at least one of 9-9b to utilize the absorbing capacity of the absorbing layer(s) more effectively, i.e. more fully. Therefore, to employ a absorbent layer(s)/delay layer(s) combination as taught by Matsuda on the Unicharm device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would more effectively and fully utilize the absorbing capacity of the absorbing layer(s) such that the insert would be more capable of entirely absorbing the received fluid allowing continuous usage of the undergarment underneath or of absorbing more

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of the fluid before passing a lesser quantity of remaining fluid to the absorbent undergarment underneath and the desirability of such by Unicharm.

Issue 2:

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm '110 and Matsuda '054 and further in view of Poulsen '379.

With regard to claim 10, the broadest claim, the device as taught by Unicharm and Matsuda includes at least a first and a second absorbent layer with the second absorbent layer positioned between the at least one delay layer and the first absorbent layer but does not teach each primary surface of the first absorbent layer having a surface area less than the surface area of each primary surface second absorbent layer, e.g. the first absorbent layer is smaller than the second, as claimed in claim 10. However see Poulsen '379 at the Figures and col. 2, lines 53-54 and 62-66, i.e. interchangeability of equal sized absorbent layers with those of increasing width from the body facing surface to the garment facing surface. To make the equal sized absorbent layers of the prior art absorbent layers which increase in width from the body facing surface to the garment facing surface, i.e. a first absorbent layer which is smaller than the second absorbent layer, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Poulsen. It is further noted that such a layer configuration would also provide a z-axis contour which is shaped more complementary to the crotch area of the body where sanitary napkins are worn.

(10) Response to Argument**Issue 1:**

Appellant's arguments on pages 5-7 have been considered but are deemed not persuasive in that they are narrower than the teachings of the prior art references. Specifically, the arguments set forth that one of ordinary skill in the art would not be motivated to modify the teachings of Unicharm by the teachings of Matsuda because the objectives of Unicharm and Matsuda are inconsistent. However, Appellants only cite col. 1, lines 37-47 of Unicharm to support this argument which discusses the problem with the art prior to Unicharm. However, referring to the portions of the reference cited by the Examiner supra, it is clear the objective of Unicharm to overcome this problem is to channel excess fluid from the insert to the article, i.e. diaper, below rather than have such excess fluid leak from the side edge of the insert. It is also clear that, see e.g., col. 6, paragraph 33, Unicharm envisions continuous use of the underlying article, i.e. diaper without soiling, i.e. no excess liquid channeling. As described with respect to Figure 6B, the portion of the backsheet which can pass liquid may be as big as the absorbing area, i.e. the area containing the core. In other words, Unicharm desires or intends to utilize the core of the absorbent to absorb liquid as much as possible, i.e. desires to pass liquid to the entire core including the sides of the core, and desires or intends to pass any excess liquid to an equivalent underlying area rather than to the sides of the insert. Therefore, Unicharm does not require liquid flow only straight through the center of the insert as argued by Appellant, i.e. does not preclude lateral movement of fluid in the core. Unicharm does not desire to pass liquid to the sides of the insert. Similarly, Appellants cite portions of Matsuda which teach structure other

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than the continuous fluid impermeable delay layer(s) but partially teach the function of the layer configuration to support the argument discussed supra. However, see, for example, delay layers 9-9b in the Figures which are not as wide and/or long as an overlying absorbent layer. Also attention is again directed to col. 2, lines 18-26, which teach the entire function of the delay layers which is to cause fluid to spread laterally and longitudinally therealong from absorbent structure above to structure below. Contrary to Appellant's arguments Matsuda does not teach the desire to promote the flow of liquid to the periphery of the napkin. Both Matsuda and Unicharm desire movement of liquid in order to effectively utilize as much of the absorbent core as possible. Therefore, contrary to Appellant's arguments the desires or objectives of the combined prior art references are consistent.

Therefore, the rejection of the claims under 35 USC 103 is maintained as proper.

It is noted that claim 1 only requires the delay layer positioned somewhere between the at least one absorbent layer and the outer surface. Although the Examiner choose to reject the claims on the combination of prior art under 35 USC 103, it could be argued that the Unicharm reference alone teaches the structure of claim 1, see Figure 6B, for example, wherein the outer surface would be the solid border and the open area of the pores 31a, the delay layer would be the material defining the open area of the pores inside the border and such material is between the absorbent and the border, although not vertically sandwiched between the absorbent core and the cover.

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Issue 2:

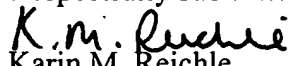
Appellant's arguments on page 8 have been considered but are deemed not persuasive in that they are narrower than the prior art rejection thereon. Appellant's argument that Poulsen does not teach a delay layer as claimed in claim 1. However, the Examiner has not applied Poulsen for its teaching of a delay layer nor has such been used to reject claim 1. It is noted however, that Appellant's interpretation of col. 1, lines 15-16 and 51-55 are narrower than the disclosure thereof, i.e. it is disclosed the innermost layer will be used for absorption first and, if convenient, torn away before use of the second layer, i.e. if it is not convenient the excess fluid is absorbed by the layer below, see col. 2, lines 29-32 thereof.

Therefore, the rejection of the claims under 35 USC 103 is maintained as proper.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Karin M. Reichle

Primary Examiner

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KMR

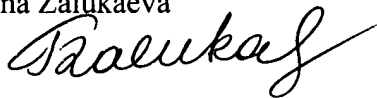
August 30, 2005

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